

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F405934

LAVONA COOMBES

CLAIMANT

WAL MART STORES, INC.
SELF INSURED

RESPONDENT

OPINION FILED MAY 27, 2005

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by GUNNER DELAY, Attorney, Fort Smith, Arkansas.

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on March 22, 2005, in Fort Smith, Arkansas. A pre-hearing order had been entered in this case on October 21, 2004. At the time of the hearing, the parties announced that they had agreed on the appropriate weekly compensation rates and that these amounts were noted on the pre-hearing order. The claimant also announced that she was not seeking temporary total disability benefits during the period beginning January 13, 2005, and continuing through January 26, 2005. This amendment was also noted on the pre-hearing order. Finally, a clerical error in regard to the appropriate claim number was further corrected. A copy of the pre-hearing order with these amendments and corrections thereon was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On June 7, 2004, the relationship of employee-self insured employer existed between the parties.
2. The appropriate weekly compensation rates are \$330.00 for total disability and \$248.00 for permanent partial disability.

3. The claim is controverted in its entirety.
4. Some short term group disability benefits have been paid and some medical expenses have been paid.

By agreement of the parties the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant sustained a compensable injury to her right knee on June 7, 2004.
2. The claimant's entitlement to temporary total disability benefits from June 22, 2004 through a date yet to be determined with the exception of the period from January 13, 2005 through January 26, 2005, and the payment of appropriate medical expenses.

In regard to these issues, the claimant contends that she sustained a compensable injury to her right knee.

In regard to these issues, the respondents contend:

"Respondents contend the claimant did not sustain an injury arising out of and in the course of her employment as defined by the Arkansas Workers' Compensation Act. The respondents contend, among other things, that the claimant does not have any measurable and objective findings to support a compensable injury."

DISCUSSION

I. COMPENSABILITY

The central issue in this case is whether the claimant sustained a "compensable injury" to her right knee on or about June 7, 2004. The burden rests upon the claimant to prove all of the elements necessary to establish a "compensable injury" to this portion of her body.

The first of these elements are contained in Ark. Code Ann. §11-9-102(4)(D). This subdivision requires that the claimant prove by medical evidence, the actual

existence of the physical injury or condition alleged to be compensable. Further, the claimant must show that the actual existence of this physical injury or condition is supported by "objective findings," as that term is defined by the Act.

The medical evidence presented in this case contains various tentative diagnoses of the etiology of the claimant's right knee complaints. These include such things as a right calf popliteal strain, right knee arthralgia, a possible degenerative tear of the medial meniscus, possible early osteonecrosis of the medial tibial plateau, and a deep vein thrombosis in the right lower leg. However, after further evaluation, testing, and actual visual inspection of the claimant's right knee joint, the ultimate diagnosis was that of right knee arthralgia (i.e. a painful right knee) due to Grade III to early Grade IV degenerative change of the medial compartment articular cartilage on both of the femoral condyle and the tibial plateau (operative report of Dr. Long, dated July 14, 2004-Claimant's Exhibit No. 1, pages 11-12, and progress report of Dr. Long, dated August 31, 2004-Claimant's Exhibit No. 1, page 19). This diagnosis is supported by and clearly based solely upon "objective findings" that were visually observed by Dr. Long during the arthroscopic procedure. Contrary to the claimant's belief, from her testimony, Dr. Long's visual inspection of the knee joint during the arthroscopic procedure totally eliminated the possibility of any meniscal or ligamentous tear and all of these various structures were normal on visual inspection.

I find that the medical evidence presented "establishes" the actual existence of a physical injury or condition involving the claimant's right knee that is in the form of arthralgia. The actual existence of this physical injury or condition is further supported by and based upon clearly "objective findings," as that term is defined in Ark. Code Ann. §11-9-102(16)(A)(i). Thus, in regard to this physical injury or condition, the claimant has satisfied the statutory requirements of Ark. Code Ann. §11-9-102(4)(D).

The claimant must next prove that this physical injury or condition satisfies the definitional elements for a "compensable injury" set out in Ark. Code Ann. §11-9-102(4)(A). Two potential subdivisions of this section could be applicable to this claim. These subdivisions are §11-9-102(4)(A)(i) and §11-9-102(4)(A)(ii)(a). The claimant must prove all of the essential elements of at least one of these subdivisions in order to prove that her right knee difficulties represent a "compensable injury."

In order for the claimant's right knee difficulties to represent a "compensable injury" under Ark. Code Ann. §11-9-102(4)(A)(i) the claimant must prove the occurrence of a physical injury:

- (1) That arose out of and occurred in the course of her employment;
- (2) That was caused by a specific incident;
- (3) That is identifiable by time and place of occurrence;
- (4) That caused internal or external physical harm to her body;
- (5) That required medical services or resulted in disability.

In order for the claimant's right knee difficulties to represent a "compensable injury" under Ark. Code Ann. §11-9-102(4)(A)(ii)(a), the claimant must prove the occurrence of a physical injury:

- (1) That arose out of and occurred in the course of her employment;
- (2) That caused internal or external physical harm to her body;
- (3) That was caused by rapid repetitive motion.

A physical injury or condition "arises out of and occurs in the course of the employment," if there is a causal relationship between the physical injury or condition and the employment. However, after the Enactment of 796 of 1993, not all physical injuries that "arise out of and occur in the course of the employment" (i.e. have a

causal connection with the employment) represent "compensable injuries" under the Act.

For injuries falling under Ark. Code Ann. §11-9-102(4)(A)(i), this employment related cause must involve a "specific incident." For injuries falling under Ark. Code Ann. §11-9-102(4)(A)(ii)(a), this employment related cause must involve rapid repetitive motion (unless the injury is in the form of carpal tunnel syndrome). The credible medical evidence presented shows that the claimant's symptoms and difficulties with her right knee are the result of a degeneration of the articular cartilage covering the surface of the bone of the claimant's right femoral condyle and tibial plateau. The severity of the degenerative changes noted by Dr. Long on July 14, 2004, would indicate that these degenerative changes were longstanding and pre-existed any incident on June 7, 2004. These degenerative changes are also known to normally progress, over time and without any particular or specific traumatic event. In the present case this is evidenced by the fact that the claimant's degenerative changes in her articular cartilage appears to have progressed after July 14, 2004. X-rays performed by Dr. Long on September 21, 2004, showed a narrowing of the medial joint space, which had not been previously present. During this period of time, the claimant was not performing any employment for the respondent or any other employer, and there is no evidence of any additional particular trauma involving the claimant's right knee. Clearly, an employment aggravation of a pre-existing condition may be a "compensable injury" under the Act. However, any employment related aggravation must still satisfy all of the elements or requirements of compensability set out in either Ark. Code Ann. §11-9-102(4)(A)(i) or Ark. Code Ann. §11-9-102(4)(A)(ii)(a).

The claimant contends that her knee difficulties were caused by a "specific incident." In her testimony, she describes a particular identifiable event on June 7,

2004. She stated that she felt a sudden onset of pain in her right knee as she turned to her right to pull out a shopping cart. She believed this particular event to have occurred around 9:00 to 10:00 a.m. She also describes a subsequent event that occurred on that date when she was simply walking to her car in the parking lot. However, the various histories related by the claimant in closer temporal proximity to the date of her alleged injury failed to describe any particular incident or event as occurring contemporaneously with the onset of the symptoms. The initial request for medical care notes that the time of occurrence of the reported injury is unknown, but sometime between 6:00 a.m. and 10:00 a.m. This document further describes the accident as follows:

"Unknown-thinks twisted by pulling carts."

This form appears to have been erroneously dated June 6, 2004, as the testimony of all the witnesses indicates that it was completed on June 7, 2004.

The claimant was sent directly to Dr. Keith Holder, the company physician. The handwritten notations of Dr. Holder, dated June 7, 2004, relate:

"Exactly what happened-suddenly unable to put weight on right leg/intense pain back and front of right knee, tender popliteal and lateral thigh joint above knee."

In his typewritten clinic note of that same date, Dr. Holder states:

"This is the initial narrative summary for Ms. Coombes (an employee of Wal Mart) working at the Rogers Avenue Super Center as a greeter. She usually pulls carts apart, pushing, pulling, and twisting. She reports today that she suddenly had a pain in the right calf and popliteal area of the right knee and was suddenly unable to put weight on the right leg due to his pain."

Dr. Holder's initial physical examination revealed no evidence of recent injury or trauma, such as bruising or edema.

In a second clinical note, later than same date, Dr Holder records :

"This is the follow up examination on Mrs. Coombes, an employee of Wal Mart, who was seen here previously today

complaining that when she got out of her car at Wal Mart, was returning into the store, that her right knee popped with a significant amount of pain. She was unable to walk in without assistance from the push cart and she has not had her medication filled yet. She reports difficulty putting weight on her right leg, actually telling us she is unable to but she was able to get up out of the wheel chair and walk to the table."

Dr. Holder's repeat physical examination still failed to show any evidence of an acute injury.

Helen Heflin testified that she was the respondent's assistant store manager. She stated that some time between 8:00 and 8:30, she noticed the claimant in back of the store (near the time clock) and that the claimant was limping. She inquired of the claimant as to this problem, and the claimant informed her :

"I don't know, it just started hurting."

Finally, she testified that later that date the claimant came to her and advised her that her knee was really hurting and that she wanted to see a doctor. At that time, the medical request form (Claimant's Exhibit No. 1, pages 27-28) was filled out and the claimant was transported to Dr. Holder, the company doctor.

Sue Young testified that she was the co-manager of the store, and was over both Ms. Heflin and the claimant. She stated that some time between 7:30 and 9:00 a.m. on June 7, she noticed the claimant limping while working around the "cart corral." Upon observing this, she went over to the claimant and asked what was wrong. She testified that the claimant advised her that she did not know, but that her knee was hurting terribly. Ms. Young testified that later that day, after being advised by Ms. Heflin that the claimant was continuing to complain with her knee, she called the claimant into the office and the appropriate reports were made. Ms. Young testified that at that time the claimant again advised her that she did not know "how it happened," but that it must have been related to her moving around the shopping carts. It was her testimony that she went with the claimant to Dr. Holder's office.

At that time, she heard the claimant advise Dr. Holder that she didn't know how she had hurt herself, but that it must have been due to pulling on the shopping carts. Finally, she testified that when she was going to lunch, she observed the claimant in the respondent's parking lot with a motorized shopping cart. At that time, she again spoke to the claimant and the claimant told her that her knee "popped" and her pain had become severe when she was merely walking from her car to the store.

The claimant was first seen by Dr. James Long on June 21, 2004. In his initial report, Dr. Long chronicles the following history of the onset of the claimant's complaints:

"This is the initial visit for the 63-year-old female complaining of pain in her right knee. Her symptoms began on 6.07.04. She as at work at Wal Mart where she pulls and arranges shopping carts for customers. She does a lot of pushing and pulling of these carts and just started to have pain without any overt history of an injury. It got progressively worse to the point that she could not even bear weight. She did have one episode of a slight pop of the knee but she has not had this problem before or since. The knee has not been overtly infused but there has been some swelling of the leg down to the ankle. This is a pitting edema that comes and goes. She never had that problem before either."

After consideration of all the evidence presented, it was simply my opinion that the claimant's testimony is contradicted by all of her previous statements concerning the onset of her complaints and is not sufficiently credible to establish a work related "specific incident" as the cause of her right knee difficulties. Instead, I find that the greater weight of the evidence indicates that these difficulties manifested themselves without any particular work related traumatic incident or event. Thus, the claimant has failed to prove the second necessary requirement for a "compensable injury," as that term is defined by Ark. Code Ann. §11-9-102(4)(A)(i).

The claimant's employment position clearly required her to engage in prolonged standing and walking, while pushing and pulling on shopping carts. The claimant had

held this position for a number of years prior to June 7, 2004. Such employment activities, particularly for this extended period of time, could have reasonably played a causal role in producing or accelerating the claimant's degeneration of the articular cartilage in the medial compartment of her right knee. These activities could also have reasonably caused this condition to have become symptomatic at an earlier date. In fact, I believe that the evidence presented shows this to be the case. However, the existence of such a causal relationship would only be sufficient to prove that her right knee difficulties "arose out of and occurred in the course of her employment." As previously noted, after the Enactment of Act 796 of 1993, the mere fact that a physical injury may have arisen out of or occurred in the course of the employment is not sufficient, in and of itself, to cause such an injury or condition to be "compensable."

The claimant's employment activities including prolonged standing and walking, would not reasonably be considered to involve "rapid repetitive motion," given the terms usual and customary meaning. Her prolonged standing would involve no motion of her knee. The evidence further shows that the claimant's walking or other movement of her knee was not required to be performed with any degree of frequency or rapidity.

In fact, the medical evidence indicates that weight bearing pressure on the knee, rather than movement of the knee, could aggravate the claimant's degenerative condition. The reports and records of Dr. Long show that, after the claimant was diagnosed as experiencing significant articular cartilage degeneration, Dr. Long only restricted her from prolonged standing or walking, and prescribed and encouraged physical therapy and other types of exercise involving movement of the knee joint, itself.

After consideration of all the evidence presented, it is my opinion that the

claimant has failed to prove that her knee right knee difficulties were in any way caused or aggravated by employment related "repeated repetitive motion." Thus, the claimant has failed to prove this necessary requirement for her right knee difficulties to represent a "compensable injury," under the definition given in Ark. Code Ann. §11-9-102(4)(A)(ii)(a).

In summary, I find that the claimant has failed to prove by the greater weight of the credible evidence that her difficulties with her right knee represent a "compensable injury" as that term is defined by the Act. Specifically, she has failed to prove by the greater weight of the credible evidence that her right knee difficulties were in any way caused, aggravated, precipitated, or accelerated either by an employment related "specific incident" or by employment related "rapid repetitive motion." Therefore, I have no alternative but to deny and dismiss her claim in its entirety.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, including June 7, 2004, the relationship of employee-self insured employer existed between the parties.
3. On all relevant dates, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$330.00 for total disability and \$248.00 for permanent partial disability.
4. The claimant has failed to prove by the greater weight of the credible evidence that she sustained a "compensable injury" to her right knee, on or about June 7, 2004. Specifically, she has failed to prove by the greater weight of the credible evidence that her right knee difficulties were in any way causally related to either a specific employment related

incident or to employment related activities requiring rapid repetitive motion.

5. The respondents have denied the occurrence of any compensable injury to the claimant's right knee and have controverted this claim in its entirety.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss this claim in its entirety.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge